

the “enterprise”. The activities included in the enterprise must be known, and any activities not a part of the enterprise must be excluded before the dollar volume of sales derived from the activities of the enterprise can be computed.

§ 794.109 Statutory basis for inclusion of activities in enterprise.

The “enterprise” for purposes of enterprise coverage under section 3(s) and the exemption provision in section 7(b)(3), is defined in section 3(r) (§ 794.106) in terms of the activities in which it is engaged. All the “related activities” which are “performed * * * by any person or persons for a common business purpose” are included if they are performed “either through unified operation or common control.” This is true even if they are performed by more than one person, or in more than one establishment or by more than one corporate or other organizational unit. The definition specifically includes as a part of the enterprise, departments of an establishment operated through leasing arrangements. These statutory criteria are discussed in more detail in subsequent sections.

§ 794.110 Activities excluded from the enterprise by the statute.

The circumstances under which certain activities will be excluded from the “enterprise” referred to in the Act are made clear by the definition quoted in § 794.106. The definition distinguishes between the related activities performed through unified operation and common control for a common business purpose by the participants in the enterprise, and activities which are related to these activities but are performed for the enterprise by a bona fide independent contractor (for example, an independent accounting or auditing firm). The latter activities are expressly excluded from the “enterprise” as defined. In addition, the definition contains a proviso detailing certain circumstances under which a retail or service establishment under independent ownership will not lose its status as a separate and distinct enterprise by reason of certain franchise and other arrangements which it may enter into with others. This proviso, the effect of

which is more fully explained in parts 776 and 779 of this chapter, may be important to wholesale or bulk distributors of petroleum products in determining whether the effect of particular arrangements which they may make with retailers of their products will be to include activities of the latter with their own activities in the same enterprise for purposes of the Act.

§ 794.111 General characteristics of the statutory enterprise.

As defined in the Act, the term “enterprise” is roughly descriptive of a business rather than of an establishment or of an employer although on occasion the three may coincide. The enterprise, however, is not necessarily co-extensive with the entire business activities of an employer. The enterprise may consist of a single establishment which may be operated by one or more employers; or it may be composed of a number of establishments which may be operated by one or more employers. On the other hand, a single employer may operate more than one enterprise. The Act treats as separate enterprises different businesses which are unrelated to each other and lack any common business purpose, even if they are operated by the same employer.

“INDEPENDENTLY OWNED AND
CONTROLLED LOCAL ENTERPRISE”

§ 794.112 Only independent and local enterprises qualify for exemption.

The legislative history of the exemption (§ 794.101) shows that the proponents of an amendment to provide the relief which it grants from the overtime pay provisions of the Act were organizations of independent local merchants who did not as a rule engage extensively in interstate operations such as those typical of major oil companies, and who functioned primarily at the local level in distributing petroleum products at wholesale or in bulk. As a result the exemption provided by the Act, like that requested, was limited to enterprises which are “local” (§ 794.113) and are “independently owned and controlled” (§§ 794.114-794.118).